

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ARTHUR HAROLSON,

Plaintiff, No. CIV S-04-2068 DFL KJM P

vs.

CLAIRE TESKE, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On October 26, 2004, the court found plaintiff's complaint, which alleged a failure to provide him with prescription glasses, appropriate for service on defendants Teske and Miller. On May 27, 2005, these defendants filed a motion to dismiss.

On July 6, 14, and 15 and September 6, 2005, plaintiff filed documents entitled "amended complaint." These documents do not supplement the claims relating to glasses in the original complaint, but seek to add additional causes of action and defendants. In addition, on July 14, 2005, plaintiff filed an additional request to proceed in forma pauperis. Finally, in the amended complaint filed September 6, 2005, plaintiff has asked for the appointment of counsel. In light of plaintiff's filings, and the contents thereof, the court has determined that this case may

1 be appropriate for appointment of counsel.

2           The United States Supreme Court has ruled that district courts lack authority to  
3 require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist.  
4 Court, 490 U.S. 296, (1989). In certain exceptional circumstances, however, the court may  
5 request the voluntary assistance of counsel under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935  
6 F.2d 1015 (9th Cir. 1990); Wood v. Housewright, 900 F.2d 1332 (9th Cir. 1990). In this case the  
7 court is not sure whether those exceptional circumstances exist or not. Therefore, this court will  
8 refer this case to the civil rights clinic in this district for review.

9           Plaintiff is cautioned while the case is under review, he has responsibility to  
10 continue to prosecute his action. The court is not staying the litigation pending the review; rather  
11 the review and continued processing of this case will take place at the same time. No scheduled  
12 dates in this litigation have been vacated. Also, it may ultimately turn out that volunteer counsel  
13 may not be procurable for plaintiff's case.

14           Accordingly, IT IS HEREBY ORDERED that:

15           1. The Clerk of the Court is directed to notify the King Hall Civil Rights Clinic at  
16 the University of California, Davis School of Law of this order;

17           2. The Civil Rights Clinic is requested to promptly determine whether it will  
18 accept appointment in this case, or whether, in cooperation with the Sacramento Chapter of the  
19 Federal Bar Association, it is able to identify counsel willing to accept appointment; and

20           3. The Civil Rights Clinic shall inform the court of its determination within thirty  
21 days of the date of this order.

22           4. Plaintiff's July 14, 2005 motion to proceed in forma pauperis is denied as  
23 unnecessary.

24           5. No action will be taken on plaintiff's amended complaints until the time  
25 provided for a response from the Civil Rights Clinic has expired.

26           6. The Clerk of the Court is directed to serve a courtesy copy of this order on

1 Professor Bill O. Hing, UC Davis School of Law, King Hall Room 2083, 400 Mrak Hall Drive,  
2 Davis, California 95616-5201.

3 DATED: September 14, 2005.

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6 UNITED STATES MAGISTRATE JUDGE

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